

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**DEFENDANT'S MOTION TO SUPPRESS
COMPAQ COMPUTER**

Now comes the defendant in the above entitled action and moves this Honorable Court pursuant to Rule 41 and 12 of the Federal Rules of Criminal Procedure for an order suppressing the fruits of a series of searches directed against him and as his basis therefore asserts the following:

On June 23, 2004 the defendant's Compaq laptop computer was seized during the execution of a search warrant at his residences at 1102 Springfield Street, Feeding Hills, MA. This warrant authorized the seizure of the computer as an item that could hold electronic evidence of a crime.

A second search warrant for the Compaq Laptop issued on July 2, 2004. This warrant authorized a limited search of the computer's hard drive. A return was filed on July 22, 2004 indicating the search warrant was unexecuted.

On July 12, 2004 a third search warrant was issued for the same computer by a Judge sitting in the District of Massachusetts, authorizing a search identical to that in the second warrant. Upon information and belief, the Compaq computer which was the subject of this search warrant, was physically in the custody of Special Agent Fretts in the District of Connecticut at the time this search warrant was issued.

The third search warrant expired on July 22, 2004. On or before July 23, 2004 the Laptop computer which is the subject of this motion was physically transferred to the District of Virginia and on that date the computer password was accessed and a copy of the computer's hard drive, containing various kinds of data was copied on or about July 26, 2004. This search occurred after the third search warrant had expired and was in all respects warrantless.

On July 28, 2004 a fourth search warrant was issued in the District of Massachusetts for

the same laptop computer. On the date the warrant was issued in the District of Massachusetts the computer was located in the District of Virginia and the warrantless search and seizure of its hard drive had already taken place.

Beginning August 2, 2004 and ending on August 6, 2004 agents of the FBI conducted a search of the Compaq laptop computer in the District of Massachusetts under the authorization of the fourth search warrant and seized certain items of evidence which were not itemized in the return on said warrant as no inventory was ever filed.

As a result thereof, certain items were seized which the Government intends to introduce at the trial of this indictment.

The defendant believes and therefore avers the Government ought not to be permitted to introduce said evidence for the following reasons;

1. The Judge issuing the third search warrant dated July 12, 2004 did so in violation of Rule 41(b)(1) and was without jurisdiction to have issued the warrant;
2. The Magistrate Judge issuing the search warrant dated July 28, 2004 did so in violation of Rule 41(b)(1) and was without jurisdiction to have issued the warrant;
3. The computer which was the subject of the search warrants referred above, was the subject of a series of warrantless searches which occurred on July 23 and July 26, 2004 in the District of Virginia;
4. The agents executing the warrants above described failed to execute the warrants in accordance with Rule 41(b)(1),(2), (3)(A)(B), and 4.

WHEREFORE, the defendant claims said items of evidence and evidence derived therefrom was obtained in violation of his rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and that the evidence so obtained be suppressed at the trial of these indictments; in anticipation of further discovery by way of evidentiary hearing; leave is sought to amend and supplement the grounds and basis alleged in support of the motion to suppress and for the filing of an additional memorandum of law in order to properly focus the relevant issues for the Court's consideration.

THE DEFENDANT

BY:/s/ Vincent A. Bongiorni, Esq.
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CERTIFICATE OF SERVICE

I, Vincent A. Bongiorni, Esq., do hereby certify that I have served a copy of the foregoing via CM/ECF to Assistant United States Attorney, Kevin O'Regan, Esq., United States District Court, 1550 Main Street, Springfield, MA. 01103 this 6th day of June 2006.

/s/ Vincent A. Bongiorni